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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,871	02/03/2004	Paul Roberts	60.130-1993; 04MRA0055	1045
26096	7590	02/06/2006	EXAMINER	
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			STORMER, RUSSELL D	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/770,871	Applicant(s) ROBERTS ET AL.	
	Examiner Russell D. Stormer	Art Unit 3617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 10-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, 12-23 and 26 is/are rejected.
- 7) ☒ Claim(s) 11, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 3, 10, 16, 17, 19-23, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Varela.

Varela discloses a non-rotating tubular axle usable in a trailer comprising a brake flange or torque plate 24 which is fixed to the axle. As shown in figure 5A, a plurality of teeth or interlocking discrete radial protrusions 36, 38 are provided to prevent relative rotation between the plate 24 and the axle 28. Further, axial location members or end stops (unlabelled) are formed by the tube 28 on either side of the plate as shown in figure 3. Although a brake is not shown, being a brake flange, the plate 24 would inherently have a brake mounted thereto.

With respect to claims 16, 17, and 19-23, the method of mounting the torque plate on the axle is met by the structure and method of assembly of the axle 28 and plate 24 of Varela inasmuch as the plate is axially and radially located.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Varela.

A single male member 42 and female member 40 are shown in figure 5B to prevent relative rotation between the plate and the tube. However, those of ordinary skill in the art could readily modify the construction to have a plurality of the two members as a duplication of parts in order to provide a more secure engagement depending on the intended use of the plate and axle assembly.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Varela in view of Garrett et al (previously cited).

Varela does not mention the use of a disc brake.

Garrett et al teaches a torque plate assembly in which a disc brake is used.

From this teaching it would have been obvious to use a disc brake with the assembly of Varela as such are well-known in the art.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Varela in view of Creek et al (previously cited).

Varela does not disclose the use of welds in the assembly.

Creek et al teaches a tubular axle which receives a flange 14, A plurality of teeth interlock the axle and flange. Welds 42, 46 may be provided to finish the assembly. These welds are clearly non-torque bearing welds because the torque is borne by the teeth interlocking the axle and the flange. From this teaching it would have been obvious to provide the assembly of Varela with a non-torque bearing weld between the plate and the axle as this would, for instance, seal the connection between the plate and the weld.

8. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varela in view of Garrett et al.

Varela is applied as set forth in paragraphs 2 and 5 above and further in that, even though a second torque plate is not shown in Varela, it would have been inherent that another one would be provided at the other end of the axle. Varela does not mention the use of a disc brake.

Garrett et al teaches a torque plate assembly in which a disc brake is used.

From this teaching it would have been obvious to use a disc brake with the assembly of Varela as such are well-known in the art.

***Allowable Subject Matter***

9. Claims 11, 24, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments filed November 25, 2005 have been fully considered but they are not persuasive. As shown in figure 5A, Varela does indeed teach the use of radial projections.

Applicant's arguments with respect to claims 13-20 have been considered but are moot in view of the new grounds of rejection. The additional limitations of the radial location members required the new rejection.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boughton was omitted from the list of references in the last office action, but is no longer pertinent as Applicants' amendments would have overcome the use of Boughton. The omission is regretted and Boughton is now cited for the record. The other references show additional torque plate assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571)


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272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2/2/06

  
RUSSELL D. STORMER  
PRIMARY EXAMINER 2/2/06